

<b>FEE TRANSMITTAL</b> <b>for FY 2006</b> Patent fees are subject to annual revision. Effective December 8, 2004	<b>Complete if Known</b>	
	Application Number	10/765,423
	Confirmation Number	1531
	Filing Date	January 27, 2004
	First Named Inventor	Brian David Hofrichter
	Examiner Name	Lorna M. Douyon
	Art Unit	1751
<b>TOTAL AMOUNT OF PAYMENT (\$500)</b>	Docket No.	9150

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<b>METHOD OF PAYMENT</b>		<b>FEE CALCULATION (continued)</b>																															
1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company		<b>5. ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1<sup>st</sup> month</td> <td>(\$120) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2<sup>nd</sup> month</td> <td>(\$450) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3<sup>rd</sup> month</td> <td>(\$1,020) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4<sup>th</sup> month</td> <td>(\$1,590) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5<sup>th</sup> month</td> <td>(\$2,160) <input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50) <input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500) [X]</td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000) <input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370) <input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Fee Description	Fee Paid	Extension for reply within 1 <sup>st</sup> month	(\$120) <input type="checkbox"/>	Extension for reply within 2 <sup>nd</sup> month	(\$450) <input type="checkbox"/>	Extension for reply within 3 <sup>rd</sup> month	(\$1,020) <input type="checkbox"/>	Extension for reply within 4 <sup>th</sup> month	(\$1,590) <input type="checkbox"/>	Extension for reply within 5 <sup>th</sup> month	(\$2,160) <input type="checkbox"/>	Information Disclosure Statement fee	(\$180) <input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130) <input type="checkbox"/>	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50) <input type="checkbox"/>	Non-English specification	(\$130) <input type="checkbox"/>	Notice of Appeal	(\$500) <input type="checkbox"/>	Filing a brief in support of an appeal	(\$500) [X]	Request for oral hearing	(\$1,000) <input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>	Other:	<input type="checkbox"/>
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3. <b>APPLICATION SIZE FEE:</b> Sheets of Spec and Drawings <input type="checkbox"/> (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) SUBTOTAL (2)+(3) (\$) [ ]		SUBTOTAL (5) (\$) [500]																															
4. <b>EXTRA CLAIM FEES FOR UTILITY AND REISSUE:</b> <table border="1"> <thead> <tr> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/> -</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below <b>Fee Description</b> Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$) [ ]		Extra Claims	Fee from Below	Fee Paid	Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/> -	<input type="checkbox"/>	SUBTOTAL (5) (\$) [500]																			
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<b>SUBMITTED BY</b>		<b>Complete (if applicable)</b>	
Name (Print/Type)	Idris N. McKelvey	Registration No. (Attorney/Agent)	57,057
Signature		Telephone	(513) 626-0552
		Date	January 12, 2007

+ This collection of information is required by 37 CFR 4.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22315-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22315-1450.

Fee Transmittal.doc (Revised for P&G use 04/25/2006)

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**TO: Lorna M. Douyon - United States Patent and Trademark Office**

Fax No. 571-273-8300 Phone No. 571-272-1313

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Fax No. 513-626-1355 Phone No. 513-626-1673

Application No.: 10/765,423

Inventor(s): Brian David Hofrichter et al.

Filed: January 27, 2004

Docket No.: 9150

Confirmation No.: 1531

**FACSIMILE TRANSMITTAL SHEET AND****CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8**

*I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on January 12, 2007, to the above-identified facsimile number.*

Pam Lolli (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:\*\*

- 1) Fee Transmittal
- 2) Appeal Brief - 9 pages
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Number of Pages Including this Page: 11

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/301,910  
Inventors : Brian David Hofrichter et al.  
Filed : January 27, 2004  
Art Unit : 1751  
Examiner : Lorna M. Douyon  
Docket No. : 9150  
Confirmation No. : 1531  
Customer No. : 27752  
Title : **Personal Cleansing Composition Containing Irregularly Shaped Particles and Spherical Particles**

APPEAL BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed via facsimile on November 17, 2006. Timely filing is provided up to and including January 17, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no other known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 3-16, and 20 are pending in the present application. Claim 2 has previously been cancelled for reasons unrelated to patentability. Claims 17-19 have been withdrawn from consideration. Claims 1, 3-16, and 20 are rejected. Claims 1, 3-16, and 20 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached hereto.

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Reply to Office Action mailed on October 3, 2006  
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#### STATUS OF AMENDMENTS

All amendments have been entered.

#### SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a personal cleansing composition comprising from about 5 to about 50 weight percent of a deterative surfactant, from at least about 0.1 weight percent of irregularly shaped particles having a particle size of at least 0.01 micron, from at least about 0.1 weight percent of spherical particles having a particle size of at least 0.01 micron, from about 20 weight percent of an aqueous carrier, and a cationic polymer, wherein the median particle size of said spherical particle is greater than the median particle size of said irregularly shaped particle.

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are submitted for consideration on appeal by the Board:

- I. Rejection Under 35 U.S.C. §103(a) Over U.S. Patent No. 5,534,265 to Fowler et al.

#### ARGUMENTS

In the Office Action of August 18, 2006, the Examiner finally rejected Claims 1, 3-16, and 20 under 35 U.S.C. §103(a) as being obvious by U.S. Patent No. 5,534,265 to Fowler et al. ("Fowler").

- I. Rejection Under 35 U.S.C. §103(a) Over U.S. Patent No. 5,534,265 to Fowler et al.

Claims 1, 3-16, and 20 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,534,265 to Fowler et al. ("Fowler"). The Office Action asserts that Fowler teaches a non-abrasive personal cleansing aqueous gel composition comprising (a) from about 0.1% to about 20% of insoluble particles, (b) from about 0.05% to about 10% of a water soluble or dispersible gelling agent, and (c) from about 20% to about 99.85% water. The Office Action admits that Fowler does not teach a composition comprising irregularly shaped and spherical particles having a weight ratio and median sizes. However, the Office Action asserts that it would have been obvious to one of ordinary skill in

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the art at the time the invention was made to have prepared personal care compositions comprising a mixture of irregularly shaped particles and spherical particles in their optimum proportions because Fowler teaches that particles having a wide range of shapes can be utilized. Appellants traverse the present rejection based on the following comments.

A. *Prima Facie* Obviousness has not been established because Fowler fails to address the problem which is remedied by Appellants' claimed invention.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences *themselves* would have been obvious, but whether the claimed invention *as a whole* would have been obvious. Accordingly, a patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. *See MPEP* at § 2141.02. The Office Action asserts that because col. 1, lines 7-9 of Fowler teaches that a personal care composition comprising micronized cleansing particles is useful for cleansing the skin and hair, that routine experimentation would have led one of ordinary skill in the art to Appellants' claimed invention. However, the particles in Fowler are specifically directed to a cleansing benefit. In fact, at col. 3, line 34, Fowler calls the particles, "cleansing particles." Therefore, Fowler does not address the problem of improving volume, body and fullness as taught by Appellants. *See the written description* at page 2, lines 23-26.

B. *Prima Facie* Obviousness has not been established because Fowler fails to provide any motivation to modify the cited reference to produce Appellants' claimed invention.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *See MPEP* at § 2143.01. Fowler only teaches that particles having a size greater than about 75 microns are tactilely perceivable and that particles of less than about 1 to about 5 microns are generally less effective for providing a cleansing benefit. *See Fowler* at col. 3, lines 26-33. Therefore, Fowler only provides a motivation to modify particle size, through routine experimentation, in order to optimize cleansing performance. In contrast, Fowler does not teach or suggest that any benefit is achieved by formulating specific shapes or sizes, or combinations of

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shapes and sizes of particles in its compositions. Therefore, Fowler provides no motivation to one of ordinary skill in the art to optimize particle proportions, because Fowler fails to teach or suggest any correlation between particle proportion optimization and *any* benefit whatsoever.

Fowler does not teach or suggest each and every limitation of Appellants' claimed invention. Therefore, Claims 1, 3-16, and 20 are not rendered *prima facie* obvious over Fowler.

#### SUMMARY

Based on the reasons set forth above, Appellants submit that Claims 1, 3-16, and 20 are patentably distinct from and nonobvious over the cited references. Accordingly, the rejection under 35 USC §103(a) is improper, and Appellants respectfully request the reversal of these rejections by the Board.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Idris N. McKelvey

Date: January 12, 2007  
Customer No. 27752

Typed or printed name  
Registration No. 57,057  
(513) 626-0552

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### CLAIMS APPENDIX

The following is a listing of Claims 1, 3-16, and 20, which are the claims involved in the Appeal:

1. (Rejected) A personal cleansing composition comprising:
  - a) from about 5 to about 50 weight percent of a deterative surfactant,
  - b) from at least about 0.1 weight percent of irregularly shaped particles having a particle size of at least 0.01 micron,
  - c) from at least about 0.1 weight percent of spherical particles having a particle size of at least 0.01 micron,
  - d) from about 20 weight percent of an aqueous carrier, and
  - e) a cationic polymer,  
wherein the median particle size of said spherical particle is greater than the median particle size of said irregularly shaped particle.
2. (Canceled)
3. (Rejected) The personal cleansing composition of claim [[2]] 1 wherein said cationic polymer has a charge density of from about 1.2 to about 7 meq/g and a molecular weight of from about 10,000 to about 10,000,000.
4. (Rejected) The personal cleansing composition of claim [[2]] 1 wherein said cationic polymer is selected from the group consisting of cationic cellulose derivative and cationic guar gum derivative.
5. (Rejected) The personal cleansing composition of claim [[2]] 1 wherein said cationic polymer has a charge density of from about 1.5 to about 3.0 meq/g.
6. (Rejected) The personal cleansing composition of claim [[2]] 1 wherein said cationic polymer has a charge density of from about 1.7 to about 2.5 meq/g.
7. (Rejected) The personal cleansing composition of claim 1 wherein said spherical particle is selected from the group consisting of spherical polyethylenes, silicone resins, nylons, and mixtures thereof.
8. (Rejected) The personal cleansing composition of claim 1 wherein said spherical particle is a spherical polyethylene.
9. (Rejected) The personal cleansing composition of claim 1 wherein said irregularly shaped particle is selected from the group consisting of metal oxides, silicas, aluminas, and mixtures thereof.

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10. (Rejected) The personal cleansing composition of claim 1 wherein said irregularly shaped particle is a precipitated silica.
11. (Rejected) The personal cleansing composition of claim 1 wherein said spherical particle is from about 0.1 to about 100 microns.
12. (Rejected) The personal cleansing composition of claim 1 wherein said spherical particle is from about 0.5 to about 60 microns.
13. (Rejected) The personal cleansing composition of claim 1 wherein said spherical particle is from about 1 to about 40 microns.
14. (Rejected) The personal cleansing composition of claim 1 further comprising a conditioning agent.
15. (Rejected) The personal cleansing composition of claim 14 wherein the weight ratio of said conditioning agent to total particles of said composition is less than about 2:1.
16. (Rejected) The personal cleansing composition of claim 14 wherein the weight ratio of said conditioning agent to total particles of said composition is less than about 1:1.
17. (Withdrawn) A personal cleansing composition comprising:
  - a) from about 5 to about 50 weight percent of a deterative surfactant,
  - b) from at least about 0.1 weight percent of irregularly shaped particles having a particle size of at least 0.01 micron,
  - c) from at least about 0.1 weight percent of spherical particles having a particle size of at least 0.01 micron,
  - d) from about 20 weight percent of an aqueous carrier, and
  - e) a cationic polymer,wherein the weight ratio of said spherical particles to said irregularly shaped particles is at least about 1:1.
18. (Withdrawn) A personal cleansing composition comprising:
  - a) from about 5 to about 50 weight percent of a deterative surfactant,
  - b) from at least about 0.1 weight percent of particles having a particle size of at least 0.01 micron,
  - c) from at least about 0.1 weight percent of spherical particles having a particle size of at least 0.01 micron,
  - d) from about 20 weight percent of an aqueous carrier, and
  - e) a cationic polymer,wherein, after treatment with said personal cleansing composition, hair demonstrates a coefficient of friction of from about 1 to about 2.
19. (Withdrawn) The personal cleansing composition of claim 18 wherein said coefficient of friction is from about 1.1 to about 1.7.



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20. (Rejected) A method of treating hair or skin by administering a safe and effective amount of the personal cleansing composition of Claim 1.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.